

## Office of the Secretary of Defense

## § 156.3

47. Clearance decisions issued by Administrative Judges and the Appeal Board shall be indexed and made available in redacted form to the public.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 35464, July 12, 1994; 59 FR 48565, Sept. 22, 1994]

### PART 156—DEPARTMENT OF DEFENSE PERSONNEL SECURITY PROGRAM (PSP)

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AUTHORITY: E.O. 12968, as amended; E.O. 10450, as amended; E.O. 10865, as amended; E.O. 13526; E.O. 12829, as amended; E.O. 13467; E.O. 13488; E.O. 12333, as amended; 5 U.S.C. 301 and 7532; section 1072 of Pub. L. 110-181, as amended; 15 U.S.C. 278g-3; 40 U.S.C. 11331; 10 U.S.C. 1564; 50 U.S.C. 3343; 5 CFR parts 731, 731.101, 732, and 736; and HSPD-12.

SOURCE: 79 FR 18163, Apr. 1, 2014, unless otherwise noted.

#### § 156.1 Purpose.

This part updates policies and responsibilities for the DoD Personnel Security Program (PSP) consistent with E.O. 12968, as amended; E.O. 10450, as amended; E.O. 10865, as amended; E.O. 13526; E.O. 12829, as amended; E.O. 13467; E.O. 13488; E.O. 12333, as amended; 5 U.S.C. 301 and 7532; section 1072 of Public Law 110-181, as amended; 15 U.S.C. 278g-3; 40 U.S.C. 11331; 10 U.S.C. 1564; 32 CFR parts 147, 154 through 156; 50 U.S.C. 3343; 5 CFR parts 731, 731.101, 732 and 736; and HSPD-12.

#### § 156.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the DoD, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereinafter referred to collectively as the “DoD Components”).

#### § 156.3 Policy.

It is DoD policy that:

(a) The Department shall establish and maintain a uniform DoD PSP to the extent consistent with standards and procedures in E.O. 12968, as amended; E.O. 10450, as amended; E.O. 10865, as amended; E.O. 13526; E.O. 12829, as amended; E.O. 13467; E.O. 13488; E.O. 12333, as amended; 32 CFR parts 147, 154 through 156; 5 CFR parts 731, 731.101, 732 and 736; 5 U.S.C. 301 and 7532; section 1072 of Public Law 110-181, as amended; 15 U.S.C. 278g-3; section 11331 of 40 U.S.C.; 10 U.S.C. 1564; 50 U.S.C. 3343; and the Intelligence Community Directive Number 704 (ICD 704) (available on the Internet at <http://www.dni.gov>).

(b) DoD PSP policies and procedures shall be aligned using consistent standards to the extent possible; provide for reciprocal recognition of existing investigations and adjudications; be cost-effective, timely, and provide efficient protection of the national interest; and provide fair treatment of those upon whom the Federal Government relies to conduct the Nation's business and protect national security.

(c) Discretionary judgments used to determine eligibility for national security positions are an inherently governmental function and shall be performed by appropriately trained and favorably adjudicated Federal Government personnel or appropriate automated procedures.

(d) No negative inference may be raised solely on the basis of mental health counseling. Such counseling may be a positive factor that, by itself, shall not jeopardize the rendering of eligibility determinations or temporary eligibility for access to national security information. However, mental health counseling, where relevant to adjudication for a national security position, may justify further inquiry to assess risk factors that may be relevant to the DoD PSP.

(e) The DoD shall not discriminate nor may any inference be raised on the basis of race, color, religion, sex, national origin, disability, or sexual orientation.

(f) Discretionary judgments that determine eligibility for national security positions shall be clearly consistent with the national security interests of the United States. Any doubt shall be resolved in favor of national security.

(g) No person shall be deemed to be eligible for a national security position merely by reason of Federal service or contracting, licensee, certificate holder, or grantee status, or as a matter of right or privilege, or as a result of any particular title, rank, position, or affiliation.

(h) No person shall be appointed or assigned to a national security position when an unfavorable personnel security determination has been rendered.

(i) Eligibility for national security positions shall be granted only to persons who are U.S. citizens for whom the investigative and adjudicative process has been favorably completed. However, based on exceptional circumstances where official functions must be performed prior to completion of the investigative and adjudicative process, temporary eligibility for access to classified information may be granted while the investigation is underway.

(j) As an exception, a non-U.S. citizen who possesses an expertise that cannot be filled by a cleared or clearable U.S. citizen, may hold a national security position or be granted a limited access authorization to classified information in support of a specific DoD program, project, or contract following a favorable security determination by an authorized adjudication facility.

(k) The DoD shall establish investigative and adjudicative policy and procedures to determine whether to issue, deny or revoke common access cards (CACs) in accordance with the standards of the Homeland Security Presidential Directive (HSPD)–12 (available in the Public Papers of the Presidents of the United States: George W. Bush (2004, Book II, page 1765) found on the Internet at <http://www.gpo.gov/>); Office of Management and Budget Memorandum (OMB) M–05–24 (available on the Internet at <http://www.whitehouse.gov/omb/>); Federal Information Processing Standards Publication 201–1 (FIPS 201–1) or successor

(available on the Internet at <http://csrc.nist.gov/>); 48 CFR, Chapter 1, Parts 1–99 (Federal Acquisition Regulation); 48 CFR, Chapter 2, Parts 201–253 (Defense Federal Acquisition Regulation Supplement), and the Office of Personnel Management (OPM) Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD–12,” dated July 31, 2008 (available on the Internet at <http://www.opm.gov/>), as applicable.

(1) Information about individuals collected as part of the investigative and adjudicative process shall be managed in accordance with applicable laws and DoD policies, including those related to privacy and confidentiality, security of information, and access to information.

#### § 156.4 Responsibilities.

(a) The Under Secretary of Defense for Intelligence (USD(I)) shall:

(1) Develop, coordinate, and oversee the implementation of policy, programs, and guidance for the DoD PSP.

(2) In coordination with the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and the General Counsel of the DoD (GC, DoD), develop policy for DoD personnel for the CAC personnel security investigation (PSI) and adjudication in accordance with HSPD–12; OMB Memorandum M–05–24; FIPS 201–1; and OPM Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD–12.”

(3) In coordination with the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)) and the GC, DoD, develop policy for contractor investigations for CAC adjudication, outside the purview of the National Industrial Security Program, under the terms of applicable contracts in accordance with HSPD–12; OMB Memorandum M–05–24; FIPS 201–1; the Federal Acquisition Regulation; the Defense Federal Acquisition Regulation Supplement; and OPM Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD–12.”

(4) Issue guidance implementing the policy in this part.